

**BAKER  
DONELSON**  
BEARMAN & CALDWELL, PC

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T.R.A. DOCKET ROOM

June 10, 2003

1800 REPUBLIC CENTRE  
633 CHESTNUT STREET  
CHATTANOOGA, TENNESSEE 37450  
PHONE: 423.756.2010  
FAX: 423.756.3447

Chairman Sara Kyle  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Via Federal Express  
Priority Overnight Delivery

**Re: Joint Petition of Tennessee-American Water Company and Marion County,  
Tennessee, for Approval of Purchase Agreement**

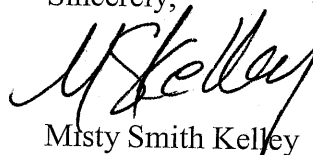
Dear Chairman Kyle:

03-00388

Please find enclosed an original and fourteen copies of a Joint Petition of Tennessee-American Water Company and Marion County, Tennessee, for Approval of a Purchase Agreement for filing in the above-referenced matter. Please stamp the extra copy "filed" and return it to me in the self-addressed, stamped envelope.

Should you have any questions concerning this matter, please do not hesitate to contact me at the above number.

Sincerely,

  
Misty Smith Kelley

MSK:klc

Enclosures

cc: Joe A. Conner, Esq.

C MSK 274940 v1  
014353-0020 06/10/2003

TENNESSEE · MISSISSIPPI · GEORGIA · WASHINGTON, D.C. · BEIJING, CHINA

Representative Office, BDBC International, LLC

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

JOINT PETITION OF )  
TENNESSEE-AMERICAN WATER )  
COMPANY AND MARION COUNTY, )  
TENNESSEE FOR APPROVAL OF )  
PURCHASE AGREEMENT )  
)

DOCKET NO. 03-00388

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**JOINT PETITION OF TENNESSEE-AMERICAN WATER COMPANY AND MARION  
COUNTY, TENNESSEE FOR APPROVAL OF PURCHASE AGREEMENT**

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Tennessee-American Water Company ("Tennessee-American") and Marion County, Tennessee ("Marion County"), pursuant to Tenn. Code Ann. § 65-4-107, file this joint petition seeking approval of the acquisition by Tennessee-American of the water utility distribution system owned by Marion County. A copy of the purchase agreement between Tennessee-American and Marion County is attached as Exhibit A to this petition. Tennessee-American and Marion County would show that the proposed purchase agreement is necessary and proper for the public convenience and properly conserves the public interest. In support of this petition, Tennessee-American and Marion County provide the following information:

1. Marion County owns a water utility distribution system serving certain residents of the Suck Creek area of Marion County (the "Suck Creek System"). A map of the service area of the Suck Creek System is attached as Exhibit B to this petition.
2. Marion County and Tennessee-American have entered into an Amended and Restated Agreement of Purchase dated April 1, 2003 (the "Purchase Agreement," attached hereto as Exhibit A), under which Tennessee-American has agreed to purchase from Marion County the assets of the Suck Creek System. Under the Purchase Agreement, the consideration for Marion County's transfer of the Suck Creek System to Tennessee-American will be Tennessee-American's repayment of up to \$153,269 of the amount outstanding under a revenue bond issued

by the Rural Development Agency, a commitment by Tennessee-American to make certain investments to improve the Suck Creek System, and the assumption by Tennessee-American of the obligation to supply water to customers served by the Suck Creek System. Tennessee-American's obligations under the Purchase Agreement are expressly conditioned upon receipt of approval of the Purchase Agreement by the Tennessee Regulatory Authority ("TRA").

3. The Purchase Agreement further grants to Tennessee-American a franchise to use all public rights-of-way, streets, alleys, sidewalks and utility easements that are necessary to operate the Suck Creek System. There is no franchise fee. The Purchase Agreement also provides that Tennessee-American will continue to provide service to the Suck Creek System customers at the current rates they are paying until such time as different rates may be approved by the TRA. The expenses and revenues of the Suck Creek System will be kept separate and distinct from the operation of the remainder of Tennessee-American's system. The acquisition of the Suck Creek System will not adversely impact the rates of current Tennessee-American ratepayers.

4. Marion County and Tennessee-American have entered into an Amended and Restated Operating and Maintenance Agreement (the "O&M Agreement") under which Tennessee-American will operate the Suck Creek System pending TRA approval of the Purchase Agreement. All expenses and revenues under the O&M Agreement are maintained separate and distinct from the operation of the remainder of Tennessee-American's system. A copy of the O&M Agreement is attached as Exhibit C to this petition.

5. The representations and agreements described in the Purchase Agreement reflect the determination by all parties involved that Tennessee-American, rather than Marion County, is best suited to provide service to customers of the Suck Creek System, including making the capital improvements necessary to maintain the efficiency and quality of the Suck Creek System.

6. The Purchase Agreement and the franchise contained therein are necessary and proper for the public convenience and properly conserve and protect the public interest.

**WHEREFORE**, Marion County and Tennessee-American request that the TRA approve the Purchase Agreement attached as Exhibit A to this petition, and grant such other relief as may be required.

Respectfully submitted,

BAKER, DONELSON, BEARMAN  
& CALDWELL P.C.

By: 

Joe A. Conner BPR #12031

Misty Smith Kelley BPR # 19450

1800 Republic Centre

633 Chestnut Street

Chattanooga, TN 37450-1800

(423) 209-4148 (Direct Telephone)

(423) 752-9549 (Direct Facsimile)

jconner@bdbc.com

mkelley@bdbc.com

Counsel for Tennessee-American Water  
Company

CAMERON & GOUGER

By: 

John Harvey Cameron BPR #02465

28 Courthouse Square

Suite 100

P.O. Box 759

Jasper, TN 37347

(423) 942-9975

(423) 942-4473 (Facsimile)

Counsel for Marion County

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served via U.S. Mail, postage prepaid, to the following this 16th day of June, 2003:

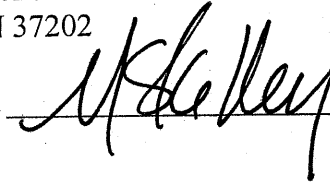
Sara Kyle  
Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Richard Collier  
Legal Division

Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Mike Gaines  
Energy and Water Division  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Russell Perkins  
Consumer Advocate and Protection Division  
Office of the Attorney General  
P.O. Box 20207  
Nashville, TN 37202



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**EXECUTION  
COUNTERPART**

**AMENDED AND RESTATED AGREEMENT OF PURCHASE**

THIS AMENDED AND RESTATED AGREEMENT OF PURCHASE (the "Agreement") made and entered into as of April 1, 2003 (the Effective Date"), by and between MARION COUNTY, TENNESSEE (the "County") and TENNESSEE-AMERICAN WATER COMPANY, a Tennessee corporation with its principal office and place of business at Chattanooga, Tennessee ("Company");

**WITNESSETH:**

THAT WHEREAS, Suck Creek Utility District (also known as the Suck Creek Utility District of Marion and Hamilton Counties, Tennessee) (the "District"), a Tennessee public corporation and utility district formed under the Tennessee Utility District Law of 1937, *Tenn. Code Ann.* §7-82-101, *et seq.*, owned and operated a water utility distribution system primarily located in the County and serving certain residents of the Suck Creek area of the County, such system being more specifically described on Exhibit 1 and also generally shown on the map attached hereto as part of Exhibit 1 (such system and all appurtenances thereto hereinafter referred to as the "Water System"); and

WHEREAS, the respective governing bodies of the County and the District have adopted resolutions acknowledging their respective agreements to consolidate by the District's transferring the Water System and all of its franchises, facilities and other assets and property and its liabilities to the County pursuant to *Tenn. Code Ann.* §7-82-202; and

WHEREAS, the District petitioned the county executive of the County for an order permitting such consolidation and transfer of the Water System and all of the District's

franchises, facilities and other assets and property and its liabilities to the County for the purpose of more efficiently and conveniently furnishing the service or services authorized by the District's order of creation; and

WHEREAS, upon finding that public convenience and necessity required the consolidation and transfer and that the same was economically sound and feasible and in the public interest, the county executive of the County entered an order approving the consolidation and transfer of the Water System and all of the District's franchises, facilities and other assets and property and its liabilities to the County; and

WHEREAS, pursuant to certain transfer documents, dated as of April 1, 2003, the District transferred the Water System and all of the District's franchises, facilities and other assets and property and its liabilities to the County; and

WHEREAS, the County believes it is in the best interests of the County and residents in the County served by the Water System for the Company to acquire the Water System from the County with the result that the Company will be the exclusive provider of water to the residents of the County served by such system; and

WHEREAS, the Company is willing to purchase the Water System from the County, and the County is willing to sell the Water System to the Company, all on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, for and in consideration of the premises, the terms, conditions, and mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of all of which are hereby irrevocably acknowledged, the parties agree as follows:

I. PURCHASE OF WATER SYSTEM ASSETS FROM THE COUNTY BY COMPANY: On the Closing Date (as that term is defined in Section VIII), Company will

purchase from the County, and the County will sell to Company, for the price and upon the terms and conditions hereinafter set forth Water System to the County, including without limitation all real property, fixtures, all rights of the District (or Marion County, as assignee of the District) under any contracts, agreements, commitments or leases relating to the Water System and all other tangible and intangible personal property constituting the Water System (including without limitation the property listed on Exhibit 2 to this Agreement, any additions or extensions to the Water System made under the Amended and Restated Operations and Maintenance Agreement dated as of April 1, 2003 between the County and Company and any interest of the County in the Connector Facilities, as that term is defined in such Operations and Maintenance Agreement) (all such property hereinafter called the "Water System Assets"). Notwithstanding the foregoing, the Water System Assets shall not include any cash, cash equivalents, short term investments, petty cash, deposit accounts in financial institutions, including without limitation any reserve accounts, checks received by the County for water service on which collection has not been made, long and short-term securities, accounts receivable or notes receivable.

II. CONSIDERATION FOR SALE OF WATER SYSTEM ASSETS: The consideration for the sale of the Water System Assets by the County to Company shall consist of (i) the payment by the Company at closing of the then outstanding balance of the debt owed to the Rural Development Authority as of the Closing Date (as defined in Section VIII below) for the loan signed on or about July 9, 1992 by the District in the original principal amount of One Hundred Seventy Thousand and 00/100 Dollars (\$170,000.00) (the "RDA Debt"); provided, however, that the payment to be made by the Company under this clause (i) shall not exceed \$153,269.29, plus accrued interest, less the amount of any payments of principal and interest due and payable on the RDA Debt prior to the Closing Date, and (ii) the assumption of the obligation to supply water to customers served by Water System and to operate, maintain, repair and



replace said system. Notwithstanding the foregoing, at its option and in its sole discretion, Company may repay the RDA Debt prior to the Closing Date, and upon such repayment, the obligations of Company under Section II (i) above shall be deemed satisfied.

III. WATER SERVICE FRANCHISE TERRITORIES: The County agrees that as part of the consideration for the purchase of the Water System Assets by Company, Company shall have the right to access all public right-of-ways, streets, alleys, sidewalks and utility easements that are necessary in order to install, maintain, test, repair, replace, extend and modify the Water System; provided, however, that Company shall repair any damages or disturbance resulting therefrom and return the affected areas to their condition existing immediately prior to such activities of Company.

IV. RESOLUTION OF REPAYMENT OF GRANTS: Company and the County are aware that the Rural Development Authority has made a grant for the construction of the Water System Assets and that such grant may, by its terms, arguably require repayment of all or some portion of the grant as a result of the sale of the Water System Assets to Company. The District and the County previously requested waivers or consents from the Rural Development Authority to permit the County to sell the Water System Assets without a requirement for the repayment of all or any portion of such grant, and the Rural Development Authority has agreed not to seek the recapture of such grant.

V. OPERATION OF SYSTEM AND RATES:

A. Operation of Water System between the Effective Date and the Closing Date: The County and the Company have concurrently herewith entered into an Amended and Restated Operations and Maintenance Agreement (the "O&M Agreement"), pursuant to which the Company will undertake the operation, maintenance, repair and replacement of the Water System, pending the closing of the purchase of the Water System Assets by the Company

pursuant to this Agreement. Until the Closing Date, the County will (a) perform when due all obligations relating to the Water System (including without limitation the payment of all interest, principal and other payments that become due on the RDA Debt), (b) take all actions necessary to deliver to Company the Water System Assets free and clear of all liens, encumbrances or claims (other than any existing lien securing the RDA Debt, and (c) keep in full force and effect all present insurance policies or other comparable insurance covering the Water System Assets and the conduct of the Water System. Until the Closing Date, the County shall not, without the prior written consent of Company, (i) amend or terminate any contract, agreement, instrument or lease comprising part of the Water System Assets, (ii) enter into or assume any contract, agreement, instrument or lease relating to the Water System not in the ordinary course of business and consistent with past practice (other than the O&M Agreement), (iii) create, assume or permit to exist any new lien, encumbrance or claim upon any of the Water System Assets (other than any existing lien securing the RDA Debt), (iv) sell, assign, distribute or otherwise transfer or dispose of any of the Water System Assets, (v) take any action outside the ordinary course of the business of the Water System, (vi) create, incur, assume, guarantee or otherwise become liable for any liability relating to the Water System or agree to do any of the foregoing, except that the County may create, incur, assume guarantee or otherwise become liable for obligations relating to the Water System in the ordinary course of Water System business solely with respect to ordinary course accounts payable, (vii) cancel, forgive, release, discharge or waive any account receivable or similar asset or right which is part of the Water System Assets, (viii) terminate the O&M Agreement, or (ix) agree to do any of the foregoing. Notwithstanding the foregoing, the County will use any net cash generated by the Water System to repair any equipment which is part of the Water System Assets or to otherwise bring the Water System into compliance with all applicable laws, rules and regulations prior to the Closing Date.

B. Operation of Water System after the Closing Date: From and after the Closing (as defined in Section VIII below) and following the termination of the O&M Agreement as a result of such Closing, Company shall own and operate the Water System Assets acquired from the County as a part of Company's general waterworks system, and all customers served directly from the Water System will be customers of Company.

C. Rates to be Charged: Those customers served directly from the Water System will initially be charged the rates existing on the Closing Date (as defined in Section VIII below), subject to approval of the Tennessee Regulatory Authority (the "TRA"), and thereafter will be charged such rates and charges of the Company as shall be approved from time to time by the TRA, based on the Company's filing with the TRA.

VI. NONASSUMPTION OF LIABILITIES AND UNDERTAKINGS OF COMPANY AND COUNTY. The County and Company expressly agree that, (i) except to the extent set forth in Section II of this Agreement, and (ii) except for the obligation to make refunds under routine extension agreements between the County and its current customers for as long as, and to the same extent as, the County would have been obligated if the County had continued to own the Water System Assets, Company is not assuming any other liabilities, obligations or debts of the County or the District. As set forth in Section II of this Agreement, at the Closing and as the consideration for the sale of the Water System Assets by the County to Company, Company will (i) repay the RDA Debt (to the extent set forth in Section II) and (ii) assume the obligation to supply water to customers served by the Water System and to operate, maintain, repair and replace said system. All other debts and liabilities of the District or the County relating to the Water System Assets will be settled by the County or the District prior to or on the Closing Date (as defined in Section VIII below), and any debts not settled at the Closing Date will remain solely the obligation of the County and will be paid by the County.

VII. ADMINISTRATIVE APPROVAL REQUIRED: Within sixty days from the Effective Date, the County, Company and, if required, the District will institute and prosecute with diligence a Joint Application to the TRA seeking approval of the proposed sale of the Water System Assets, any certificate of convenience and necessity that may be required and the other transactions contemplated by this Agreement.

VIII. CLOSING DATE; CLOSING: The closing of the transactions contemplated by this Agreement (the "Closing") shall take place on a date selected by the Company and reasonably acceptable to the County not more than sixty (60) days after the receipt of an acceptable, final, nonappealable order from the TRA approving this Agreement, the proposed sale of the Water System Assets to Company and the other transactions contemplated by this Agreement (the "Closing Date"), provided that all other closing conditions set forth in Section XVI shall have been fully performed or satisfied on or before the Closing Date. Upon mutual agreement of the County and Company, the Closing Date may be amended.

IX. CONVEYANCE AND TRANSFERS: The County shall, at the Closing, transfer and convey to Company, its successors and assigns forever, good and marketable fee simple title to the Water System Assets (as described in Section I of this Agreement), free and clear of all liens, encumbrances and claims (except any liens, encumbrances or claims resulting from Company's failure to pay the RDA Debt as required under Section II and except any liens, encumbrances and claims resulting from Company's operation of the Water System under the O&M Agreement), together with all files, plats, maps, plans, records, ledgers, and similar property, or copies thereof, that Company will need to render water service to the County customers served by the Water System. At the Closing, the County shall deliver to Company a special warranty deed for that portion of the Water System Assets that is real estate and a bill of sale and assignment for the remaining portion of the Water System Assets, such special warranty

deed, bill of sale and assignment to be in form and substance reasonably satisfactory to Company.

X. REPRESENTATIONS AND WARRANTIES BY THE COUNTY.

A. General Representations and Warranties of the County. The County represents and warrants to and covenants with Company that: (1) as of the Effective Date, the County is the owner of good and marketable fee simple title to the Water System Assets, free and clear of all liens, encumbrances or claims, except for any lien securing the debt described in Section II, and as of the Closing Date, the County will be the owner of good and marketable fee simple title to the Water System Assets, free and clear of all liens, encumbrances or claims, except for any lien securing the RDA Debt described in Section II or any liens, encumbrances or claims resulting from Company's operation of the Water System under the O&M Agreement; (2) as of the Closing Date, the Water System Assets will not be in violation of any applicable federal or state law or any ordinance, order or regulation of any governmental or quasi-governmental agency having jurisdiction over the Water System Assets; (3) as of the Effective Date and as of the Closing Date, there are no judgments, decrees or orders presently outstanding and unsatisfied against the County relating to the Water System or the Water System Assets, nor is there any litigation nor any other proceedings (including condemnation or similar proceedings) before any court or government or administrative department, commission, bureau, board or agency which threaten or affect the Water System Assets or which may, in any one case or in the aggregate, result in any material decrease in the value of, or constitute a lien or claim against, the Water System Assets; (4) as of the Effective Date and as of the Closing Date, no party, person or entity is in possession of the Water System Assets or any portion thereof, and no party, person or entity has any interest in the Water System Assets or any portion thereof, except the County and except the Company pursuant to the O&M Agreement; (5) this Agreement has been duly authorized,

executed and delivered by the County and is a valid and legal obligation of the County; (6) the County does not know or have reasonable grounds to know of any basis for the assertion against the County or the District of any material claims or liabilities other than those disclosed to Company in writing prior to the Effective Date, which might materially adversely affect the value of the Water System Assets, (7) to the best of its knowledge, the books and records of the District relating to the Water System which were provided for Company's review prior to the Effective Date (the "Financial Information") are correct and complete in all material respects, present fairly the results of operations included in such Financial Information and do not omit any information necessary to make such Financial Information not misleading, and (8) to the best of the County's knowledge, since the date of such Financial Information, there has been no material adverse change in the financial condition or operations of the Water System that would make such Financial Information incorrect or misleading. The County understands that Company, in entering into this Agreement, is not obligated to use, employ or hire any of the District's or the County's commissioners, officers, agents or employees and that, except as otherwise provided in this Agreement, Company does not accept any responsibility for any contractual or legal obligations which the District or the County might have to any other officers, agents or employees.

B. Environmental Covenants of the County. The County agrees that it will not take any action or omit to take any action with respect to the Water System prior to the Closing Date that would be a violation of any Environmental Law or would result in the Water System being in violation of any Environmental Law. For the purposes of this Section X.B., "Environmental Laws" means any "Super Fund" or "Super Lien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, as may now or at any time hereafter be in effect, regulating, relating to or imposing liability or standards of conduct

concerning any Hazardous Substance (as hereinafter defined) or the release or threatened release of a Hazardous Substance. For the purposes of this Section X.B., "Hazardous Substance" means and includes a "hazardous substance," "pollutant," "contaminant" or "hazardous waste," as such terms are defined as such in (or for the purposes of) the Environmental Laws, petroleum products, asbestos and/or any hazardous, toxic or dangerous waste, substance or material.

C. Survival. The representations, warranties and covenants contained in this Section X and the liability of the County under this Section X shall be continuing notwithstanding the purchase of the Water System Assets by the Company and the execution and delivery of the deed by the County in connection therewith. All of the representations and warranties contained in this Section X shall be deemed to be made again on and as of the Closing Date.

XI. ACCESS TO FINANCIAL INFORMATION UNTIL CLOSING DATE. Prior to the Effective Date, Company was given the right to examine, and to obtain copies of, all Financial Information and customer lists and to inspect the Water System Assets used in the water utility operations of Water System. Between the Effective Date and the Closing Date, Company shall continue to have the right to examine, and obtain copies of, any new or additional Financial Information and information regarding new customers, and, to the extent that Company does not have access to such new or additional Financial Information and information regarding new customers in connection with the performance of its duties under the O&M Agreement, the County shall provide Company with any such new or additional Financial Information and lists of any new customers immediately upon the County's becoming aware of such new or additional Financial Information or new customers. In the event the transactions contemplated by this Agreement are not consummated, all of such copies shall be returned to the County.

If, prior to the Closing Date, any one of the representations and warranties set forth in Section X of this Agreement is determined by Company not to be true and correct, then, in that event, Company may, at its sole option, terminate this Agreement, and neither the County nor Company shall be further obligated hereunder or incur or be liable for any claim, loss, damages or expenses to the other as a result of such termination.

XII. BINDING EFFECT; ENTIRE AGREEMENT. This Agreement shall be binding upon and it shall inure to the benefit of the parties hereto, their respective successors and assigns. This Agreement and its exhibits constitute the entire agreement between the parties, and no other statement or representation shall be considered a part of this Agreement or binding upon the parties unless contained herein.

XIII. NOTICES: Any notice to be given hereunder to the County shall be personally delivered or sent by U.S. certified mail to the County, c/o Howell Moss, County Executive, Marion County Courthouse, P.O. Box 789, Jasper, Tennessee 37347 or to such other person and address as the County may in writing direct. Any notice to be given to Company shall be personally delivered or sent by U.S. certified mail to the Company, at P.O. Box 6338, Chattanooga, Tennessee 37401, Attention: President, or to such other person and address as Company may in writing direct.

XIV. AMENDMENTS; TIME OF THE ESSENCE; CAPTIONS, ETC:

A. Captions. The captions preceding the text of the sections of this Agreement are inserted solely for convenience and reference and shall not be used to construe, interpret or affect any provision of this Agreement.

B. Entire Agreement; Amendment; Time of the Essence. This Agreement and the O&M Agreement contain the entire agreement between the parties and supersede any prior understandings, agreements or representations by or between the parties, written or oral,



which may have related to the subject matter hereof in any way. This Agreement may be amended and any provision of this Agreement may be waived, provided that any such amendment or waiver will be binding upon a party only if such amendment or waiver is set forth in writing and executed by such party. Time is of the essence of this Agreement.

C. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

D. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together will constitute one and the same instrument.

E. Parties in Interest. Nothing in this Agreement, express or implied, is intended to confer on any person or entity other than the parties and their respective successors and assigns any rights or remedies under or by virtue of this Agreement.

XV. FORCE MAJEURE: If the performance by Company of any of the covenants or agreements contained herein is delayed or prevented by reasons beyond the control of Company, such as an act of God, act of war, strike, lockout, restraint of labor from whatever cause, either partial or general, riot or civil commotion, order of court or administrative tribunal having jurisdiction over either party hereto, then and in any of those events, Company shall be excused from such performance to the extent that it is necessarily prevented, hindered or delayed thereby, during the continuance of any such happening or event and the time for such performance shall be extended commensurate with such delays, provided, however, that Company shall notify the

County of the happening of any such event of force majeure within a reasonable time after knowledge thereof is received by Company.

XVI. CONDITIONS PRECEDENT TO CLOSING. The parties hereto understand and agree that each of the following is a condition precedent to the obligations of Company to close the transactions contemplated by this Agreement:

- A. [Intentionally deleted.]
- B. This Agreement shall be approved by the Company and shall be approved by the County Commission of the County at a meeting of the County Commission.
- C. The TRA shall have entered a final, nonappealable Order which approves (i) the Joint Application to be filed by Company and the County, and (ii) this Agreement, and all of its terms, conditions, undertakings, agreements, and limitations, between the County and Company and grants the certificate of convenience and necessity if required.
- D. The TRA shall not have attached to its Order any terms, conditions, or limitations which, in the sole opinion of either Company or the County, shall adversely affect the economic feasibility of this project or the Agreement between the parties or require Company or the County to take any action or refrain from taking any action which might require either of them to breach any of their obligations under any mortgage or indenture, as supplemented, or any other agreement to which either of them might be a party.
- E. The transfer of the Water System to the County from the District shall have occurred on or prior to the Closing Date.
- F. The Water System Assets shall have been brought into compliance with all applicable laws, rules and regulations. If the Company has advanced any funds to the County or otherwise incurred any expense on behalf of the County in order to facilitate the achievement of such compliance, such advances or expenses shall be deducted from the consideration payable by the Company pursuant to Section II or otherwise reimbursed to the Company at or prior to the Closing.

XVII. ADDITIONAL ASSURANCES. From time to time after the Closing Date, (i) each of the parties will execute and deliver to the other party such instruments of sale, transfer, conveyance, assignment, consent, assurance and other instruments as may be reasonably requested in order to vest in such other party all right, title and interest in and to the assets being acquired by such party as contemplated by this Agreement, and (ii) each of the parties will execute and deliver to the other party such other instruments of sale, transfer, conveyance, assignment, consent, assurance and other instruments as may be reasonably requested in order to carry out the purpose and intent of this Agreement and all other agreements to be executed in connection herewith.

XVIII. AMENDMENT AND RESTATEMENT. This Agreement amends, restates, and replaces in its entirety that certain Agreement of Purchase dated as of April 1, 2003 between Company and County.

IN WITNESS WHEREOF, the County has caused this Agreement to be executed by its County Executive as authorized by a Resolution of the County Commission duly adopted and recorded at a meeting held on the 22 day of February, 1999, 2003; and Company has caused this Agreement to be executed by William F. L'Ecuyer, President, also duly authorized; all to be effective as of the Effective Date.

MARION COUNTY, TENNESSEE

By: Howell Moss  
Howell Moss County Executive

TENNESSEE-AMERICAN WATER  
COMPANY

By: William F. L'Ecuyer  
William F. L'Ecuyer  
President

STATE OF TENNESSEE  
COUNTY OF Hamilton

Before me, Virginia B. Scaeff, a Notary Public in and for the State and County aforesaid, personally appeared **William L'Ecuyer**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of **TENNESSEE-AMERICAN WATER COMPANY**, the within named bargainor, a corporation, and that he as such President, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such President.

WITNESS my hand and seal at office, on this the 19<sup>th</sup> day of <sup>may</sup>~~April~~, 2003.

Virginia B. Scaeff  
Notary Public

My Commission Expires:

April 7, 2004

STATE OF TENNESSEE  
COUNTY OF MARION

Before me, J. HARVEY CAMERON, a Notary Public in and for the State and County aforesaid, personally appeared **Howell Moss**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the County Executive of **MARION COUNTY, TENNESSEE**, the within named bargainor, a political subdivision of the State of Tennessee, and that he as such County Executive, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of such County by himself as such County Executive.

WITNESS my hand and seal at office, on this the 6<sup>TH</sup> day of <sup>MAY</sup>~~April~~, 2003.

J. Harvey Cameron  
Notary Public

My Commission Expires:

4-27-04

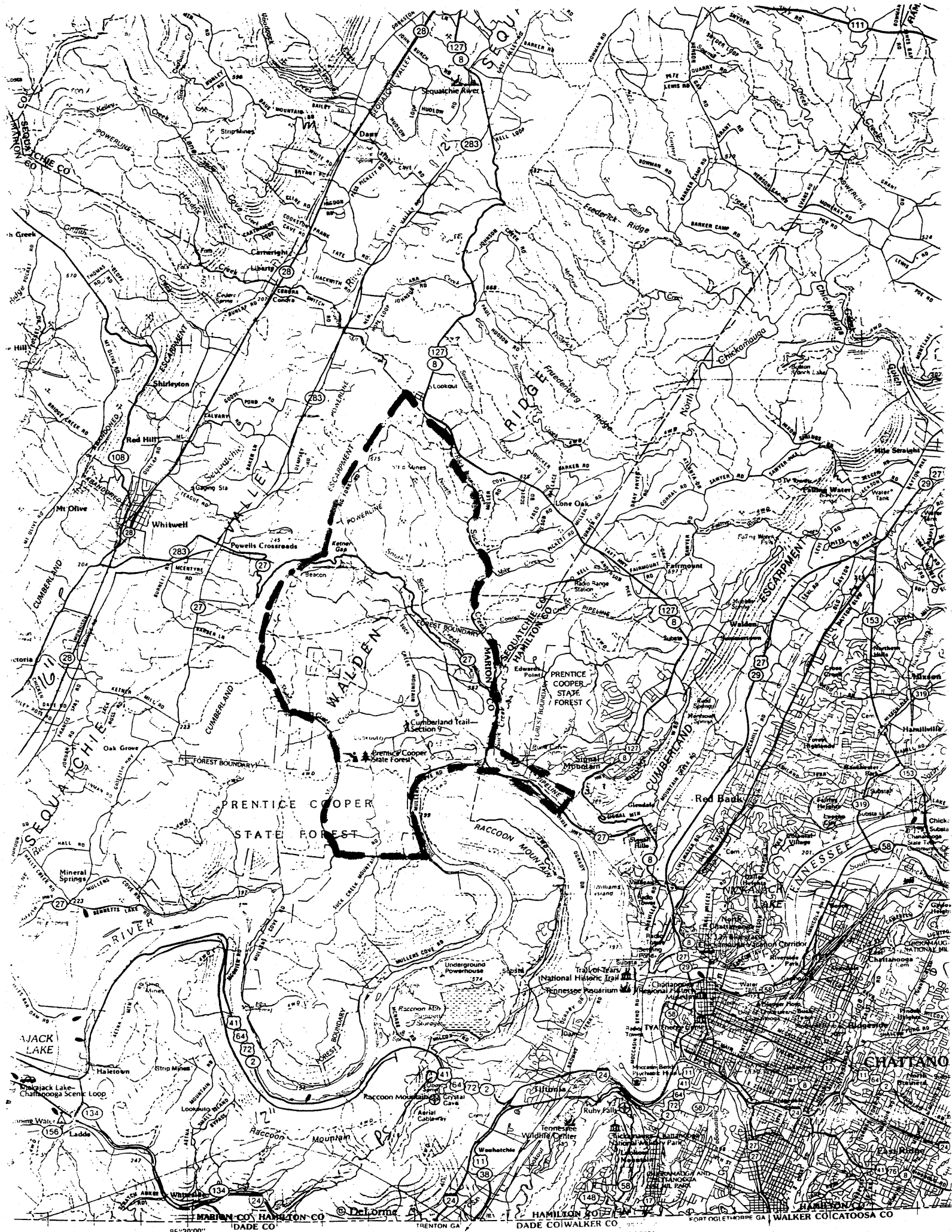
**EXHIBIT 1**  
**TO**  
**AGREEMENT OF PURCHASE**

**Legal Description and Map of Suck Creek Water System**

**Legal Description:**

Beginning on the North bank of the Tennessee River where Shoal Creek enters the River in Hamilton County, Tennessee; thence extending along the right bank looking downstream, to Ritchie Hollow in Marion County; thence west across Walden's Ridge to Mullens Creek; thence North along Mullens Creek to Shelton Creek; thence northwest along Shelton Creek to the Cumberland Escarpment at Ditch Gap; thence northeast along the Escarpment to the Marion-Sequatchie County Line; thence southeast along the Marion-Sequatchie County Line to the junction of the Marion-Sequatchie-Hamilton County Line; thence south along the Marion-Hamilton County Line to a point one half mile from the Bank of the Tennessee River at "The Suck"; thence southeast to the southwest corner of the Town of Signal Mountain, Tennessee; thence along the south boundary of the Town of Signal Mountain to Shoal Creek; thence southwest along Shoal Creek to the north bank of the Tennessee River at the point of beginning.

**Map:** Attached.

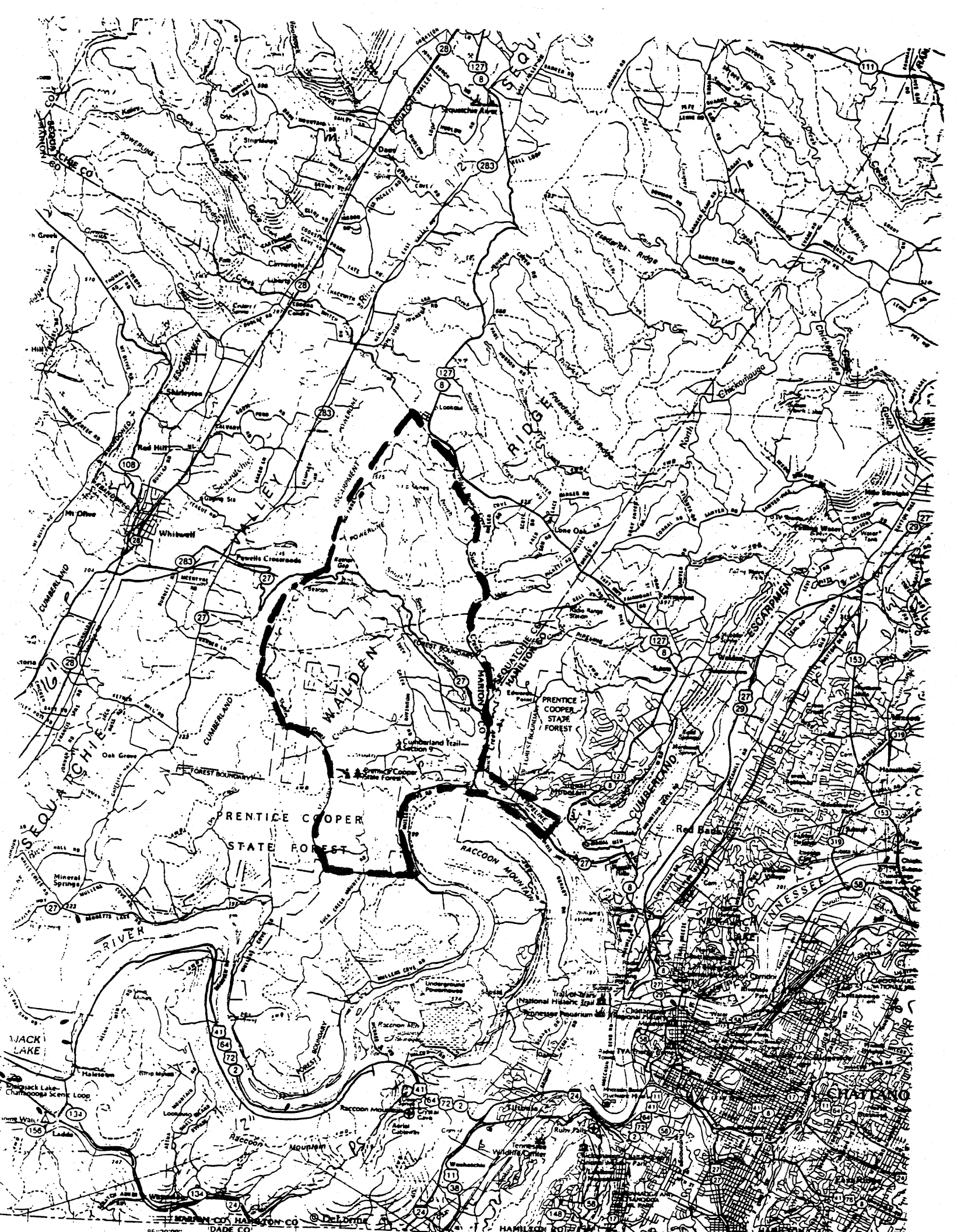


**EXHIBIT 2**  
**TO**  
**AGREEMENT OF PURCHASE**

**Certain Tangible Water System Assets**

1. water plant and building
2. water lines
  - a. at least 29,400 feet of 6-inch water mains
  - b. at least 7,200 feet of 2-inch water mains
3. one water tank
4. treatment equipment
5. approximately 185 customer service meters





EXECUTION  
COUNTERPART

**AMENDED AND RESTATED OPERATIONS AND MAINTENANCE AGREEMENT**

THIS AMENDED AND RESTATED OPERATIONS AND MAINTENANCE AGREEMENT (the "O&M Agreement") is made as of the Effective Date (as defined below), by and between **TENNESSEE-AMERICAN WATER COMPANY**, a Tennessee corporation (the "Company"), and **MARION COUNTY, TENNESSEE** (the "County").

**WITNESSETH:**

THAT WHEREAS, Suck Creek Utility District (also known as the Suck Creek Utility District of Marion and Hamilton Counties, Tennessee) (the "District"), a Tennessee public corporation and utility district formed under the Tennessee Utility District Law of 1937, *Tenn. Code Ann.* §7-82-101, et seq., owned and operated a water utility distribution system primarily located in the County and serving certain residents of the Suck Creek area of the County, such system being more specifically described on Exhibit 1 and also generally shown on the map attached hereto as part of Exhibit 1 (such system and all appurtenances thereto hereinafter referred to as the "Water System"); and

WHEREAS, the respective governing bodies of the County and the District have adopted resolutions acknowledging their respective agreements to consolidate by the District's transferring the Water System and all of its franchises, facilities and other assets and property and its liabilities to the County pursuant to *Tenn. Code Ann.* §7-82-202; and

WHEREAS, the District petitioned the county executive of the County for an order permitting such consolidation and transfer of the Water System and all of the District's franchises, facilities and other assets and property and its liabilities to the County for the purpose

of more efficiently and conveniently furnishing the service or services authorized by the District's order of creation; and

WHEREAS, upon finding that public convenience and necessity required the consolidation and transfer and that the same was economically sound and feasible and in the public interest, the county executive of the County entered an order approving the consolidation and transfer of the Water System and all of the District's franchises, facilities and other assets and property and its liabilities to the County; and

WHEREAS, pursuant to certain transfer documents dated as of April 1, 2003, the District transferred the Water System and all of the District's franchises, facilities and other assets and property and its liabilities to the County; and

WHEREAS, the County and the Company have concurrently herewith entered into an Amended and Restated Agreement of Purchase (the "Purchase Agreement") pursuant to which the Company has agreed to purchase the Water System from the County; and

WHEREAS, the County believes it is in the best interests of the County and residents in the County served by the Water System, pending the consummation of the transactions contemplated by the Purchase Agreement, for the Company to operate, maintain, repair and replace the Water System under this O&M Agreement and to be the exclusive provider of water to the residents of the County served by the Water System; and

WHEREAS, the Company is willing to undertake the operation, maintenance, repair and replacement of the Water System and to be the exclusive provider for the estimated water needs of the customers served by the Water System, all pursuant to the terms and provisions of this O&M Agreement; and

WHEREAS, the Company is willing to invest at its expense up to \$300,000.00 to construct an 8-inch interconnection water line of approximately 21,000 feet (collectively the

"Connector Facilities") to connect the Water System to the water distribution system of the Lone Oak Utility District in Sequatchie County, Tennessee (which is operated by Company under an operations and maintenance agreement), and the County is willing to contribute \$500,000.00 from available Community Development Block Grant funds ("CDBG Funds") to pay a portion of the costs of constructing the Connector Facilities, all pursuant to the terms and provisions of this O&M Agreement;

NOW, THEREFORE, for and in consideration of the premises, which are hereby made an integral part of this O&M Agreement and which are not to be construed as mere recitals, the covenants and agreements contained herein and other good and valuable considerations, the receipt and sufficiency of all of which are hereby acknowledged, the Company and the County agree as follows:

I. Supply of Water to the County Customers Served By the Water System.

A. Company agrees to provide to the customers in the County served from the Water System or any extensions or additions thereto during the term of this O&M Agreement (hereinafter the "County Customers"), subject to the terms, conditions, undertakings, agreements and limitations provided in this O&M Agreement, their total water requirements. Water delivered to the County Customers shall be supplied, at the option of Company, from (i) the wells now serving the Water System, (ii) water purchased by Company from Walden's Ridge Utility District and wheeled through the Lone Oak Utility District, or (iii) Company's own source of water. Company will be paid for water it supplies to the County Customers in the manner set forth in Section VI of this O&M Agreement.

B. Company shall monitor the quality of the water supplied to the County Customers and be responsible for complying with all state and federal standards for furnishing water to the public; provided, however, that the obligation of Company in this Section 1.B. shall

not limit the obligations of Walden's Ridge Utility District or any other supplier of water with respect to water quality or compliance with all state and federal standards for furnishing water to the public, and neither the County nor the Company relinquishes any rights that it may have against Walden's Ridge Utility District or any other supplier of water with respect to water quality or compliance with all state and federal standards for furnishing water to the public.

C. In the event of an extended shortage of water, or if the supply of water from Company is otherwise diminished or impaired, the supply of water to the County Customers shall be reduced or diminished proportionally among the County Customers. Reasonable notification of any anticipated shortage of water shall be given to the County Customers.

II. Term of This O&M Agreement.

The term of this O&M Agreement shall extend for forty (40) years from the Effective Date (as defined in Section III below) or until the date of the consummation of all of the transactions contemplated in the Purchase Agreement, whichever occurs first.

III. Effective Date.

The effective date of this Agreement (the "Effective Date") shall be April 1, 2003.

IV. Additions to and Extensions of the Water System.

Company and the County are aware that there may be written requests by the County following the Effective Date for additional use of water by the County Customers and that there may be additions and extensions made to the Water System following the Effective Date. In addition to the other requirements set forth in this O&M Agreement, the County and Company hereby specifically agree that such additional use will be allowed, and such additions and extensions will be made, if (i) there is sufficient water treatment capacity and sufficient distribution and pumping facilities from any reasonable source adequate to serve the County

Customers, including wells serving the Water System and/or Company's transmission and distribution mains, (ii) the then effective Scheduled Rates (as defined in Section VI.A.) of the County will cover the Company's Cost of Service (as defined in Section VI.A.), (iii) the proposed addition or extension will meet Company's engineering standards for design or construction and (iv) the proposed addition or extension would not be likely to have an adverse impact on Company's operation and maintenance of the Water System or any other water system owned or operated by Company (collectively, the "Addition/Extension Requirements"). Further, the County and Company agree as follows:

A. Future Additions. All additions to the Water System constructed by the County after the Effective Date shall be subject to this O&M Agreement and the Purchase Agreement; provided, however, that such additions to the Water System must be approved by both Company and the County, and provided further, that if the County has given its approval for a new addition, Company's approval of the new addition may be withheld only on the grounds that one or more of the Addition/Extension Requirements would not be met.

B. Future Extension. Extensions from the Water System and within the County boundary lines at the request of a potential customer may be installed by either the County or Company; provided that each of the Addition/Extension Requirements is met. When the County receives a request for such an extension from a potential customer, the County shall notify Company in writing within fifteen days of its receipt of said request whether the County will install such extension or desires Company to make the installation.

(1) In the event the County desires Company to install and own such extension, and Company agrees to such installation; (i) Company shall contract on its own behalf with the potential customer requesting the extension and make the installation in accordance with the applicable Rules and Regulations of the Tennessee Regulatory Authority (hereinafter the

"Rules and Regulations"); (ii) all customers attaching to such extension shall be County Customers and shall be billed in accordance with Section VI, and (iii) such extension shall be, without further cost or expense of any kind, the property of Company; provided, however, that such extension shall be subject to the Purchase Agreement.

(2) In the event the County elects to install at its expense and own such extension, the construction for that extension by the County will be performed under a contract with a contractor acceptable to Company, and all plans and specifications for that extension shall be submitted to and approved by Company before becoming a part of the Water System and being subject to Company's obligations under this O&M Agreement. Upon approval by Company of such contractor, Company, on behalf of and as agent for the County, shall contract directly with such contractor to provide the extension and shall have the right, but not the obligation, to provide an inspector, at the cost of Company, to inspect the construction of the extension. Any extension deposits taken by Company on behalf of and as agent for the County pursuant to the Rules and Regulations will be retained by Company and credited against the cost of the extension, and the balance of the deposit above the cost of the extension, if any, will be returned to the County Customer who contracted for the extension. Company, on behalf of and as agent for the County, will make refunds to County Customers pursuant to the Rules and Regulations using funds advanced to Company by the County.

(3) Refunds made pursuant to the Rules and Regulations to customers contracting directly with Company for an extension pursuant to Section IV.B. shall be the sole responsibility of Company, and the cost of such extensions, to the extent refunded or reimbursed to customers, shall be properly includable in Company's depreciable utility plant in calculating Company's cost of service in regard to the Water System and resulting rates of the County.

V. Operation and Maintenance of the Water System by Company for the County.

A. Company hereby agrees to operate, maintain, repair and replace (i) the Water System, and (ii) all water lines added thereto as additions and extensions subject to the provisions of Sections V.B and C below. Such duties of the Company shall include, without limitation, the payment of all scheduled debt service relating to the Water System (including without limitation debt service payments on the indebtedness owed to the Rural Development Authority, as described in Section II of the Purchase Agreement).

B. Under the terms of this O&M Agreement, Company is responsible for maintenance items (as defined on Exhibit 2 attached hereto and incorporated by reference) (hereinafter "Maintenance Items") that are necessary for the normal operation of the Water System. When the Company is required to install, relocate or replace capital items as defined on Exhibit 2 ("Capital Items"), the "unit of property" included within the Capital Item is to be installed, relocated or replaced at cost by the Company; provided, however, that in every such instance the unit of property shall be, and remain, the property of Company and shall be properly includable in the depreciable utility plant of Company. In the event the County desires to maintain ownership of any such unit of property that is installed, relocated or replaced by Company, the County must reimburse Company for the actual cost incurred within thirty (30) days after the work is completed. Notwithstanding the foregoing, however, all such property, whether owned by Company or the County, shall be subject to the Purchase Agreement. "Unit of property" shall have the same meaning as set forth in the Uniform System of Accounts of the National Association of Regulatory Utility Commissioners ("NARUC").

C. The County agrees that in those instances in which Company installs, replaces or relocates any unit of property in the Water System pursuant to the provisions of this Section V at its own expense, the County will, simultaneously therewith, convey to Company all



related rights of way, easements, licenses or other property interests necessary for Company to have and own such unit of property in the location and manner in which it is installed, replaced or relocated in the Water System.

D. The County agrees that the Company shall have the right to install, maintain and operate for its own use radio and telephone communications equipment, including without limitation, antennae, on existing or future water tanks and/or stand pipes at no charge.

VI. Reading Meters, Billing of Customers, Payments to the County and Company Compensation.

A. All customers served directly from the Water System under this O&M Agreement shall be County Customers. Company shall read all meters of the County Customers and render bills to those County Customers, as agent for and on behalf of the County, in a manner consistent with the meter reading and billing practices of Company employed in billing its own customers, such bills to be rendered and collected by Company on behalf of the County and to be computed based on the water usage of each County Customer. The rates (the "Scheduled Rates") of the County to be charged to the County Customers for the water service provided to them shall be set by the County. The Scheduled Rates of the County to be initially charged to the County Customers are set forth in Exhibit 3 attached hereto. The County will give Company immediate notice of any change in the Scheduled Rates, and Company shall have a reasonable period to implement any such change for purposes of billing the County Customers. During the term of this O&M Agreement, the County will adjust the Scheduled Rates as it shall deem necessary to cover Company's cost of service incurred under this O&M Agreement ("Cost of Service"). The Cost of Service of Company includes, without limitation, (i) all expenses incurred in the performance of Company's obligations under this O&M Agreement, including without limitation Maintenance Items, Capital Items, debt service payments, security expenses,

water supply expenses, standby water fees, wheeling and pumping charges, customer service, water quality expenses, all associated labor and benefit expenses, all materials and supplies and taxes and depreciation, and (ii) a reasonable rate of return to the Company. The rate of return to the Company shall be no less than the Company's rate of return authorized by the TRA at the time of any adjustment in the Scheduled Rates. If at any time Company determines that the Scheduled Rates do not cover its Cost of Service, Company may request that the County increase the Scheduled Rates. In the event that the County does not make an appropriate increase in the Scheduled Rates, Company may immediately terminate this O&M Agreement (see Section XV).

The County may also impose on the County Customers additional fees or charges, including, without limitation, tap fees and other fees deemed necessary by the County (collectively "Surcharge(s)"). Any tap fees charged by the County shall be collected and turned over by the County to Company and treated as contributed property. Any Surcharges, exclusive of tap fees, are payable to the County by Company within thirty (30) days of collection by the Company from the County Customer. Company is not responsible for any Surcharge that is billed but not collected.

It is the intent of Company and the County under this O&M Agreement that the bills rendered to each County Customer on behalf of the County reflect the amount due for the water service made available to each such County Customer (such amount to be determined by applying the Scheduled Rates of the County to the consumption of water by each County Customer as determined by the individual monthly or estimated meter readings of the respective County Customers). The bills rendered to the County Customers will be delivered by, and be payable to, Company, as agent for the County.

B. Company shall be entitled to receive from the County each month as compensation for water service rendered to the County Customers for such month and the

performance of its other obligations under this O&M Agreement an amount equal to the aggregate amount billed to all County Customers for water service for such month. Company shall prepare and deliver a monthly statement to the County which shall reflect the total amount billed by Company as agent for the County, the total amount of water delivered and the total Surcharges collected, if any, showing tap fees as a separate line item. In addition, the monthly statement to be provided to the County by Company will also include the costs of any additions or extensions, and related refunds, made at the cost of the County under Section IV. Company billing records of the County Customers will be available to the County for inspection upon reasonable notice.

C. The County agrees to have its accountants review, at least annually, at the expense of the County, the system of accounts maintained by Company for the County pursuant to this O&M Agreement and report the results of that review to the County and Company.

VII. Installation of Domestic Services.

Company shall install, in accordance with the Rules and Regulations, domestic service lines for new County Customers, including the taps on the Water System and the service lines from the Water System to the established curb line or within the public right of way nearest the main. This installation shall include the meter setting. All such service lines from the Water System to the County Customers' property line, meter settings and taps shall be constructed and installed by Company and shall be the property of Company; provided, however, that all such service lines, meter settings and taps shall be subject to the Purchase Agreement. Company shall install all meters at its cost, shall own the meters, and shall assume the obligation to repair, maintain and replace the meters and associated pressure regulators installed in the meter pits; provided, however, that such repair, maintenance and replacement shall be included in Company's Cost of Service.

VIII. Public and Private Fire Protection Services.

Company will maintain the fire hydrants that are part of the Water System on the Effective Date but shall have no obligation to install additional fire hydrants, to improve fire flows or pressures to such existing fire hydrants or sprinkler systems or provide other public or private fire protection water service to County Customers. If at any time the County or other appropriate governmental unit desires that Company install additional fire hydrants or improve fire flows or pressures to fire hydrants or sprinkler systems or provide other public or private fire protection water service to County Customers, the County and Company will negotiate the compensation to be paid to Company therefor and agree upon an appropriate amendment to this O&M Agreement.

IX. [Intentionally Omitted.]

X. Water Service Franchise Territories.

It is expressly understood and agreed by Company and the County that:

A. Company shall be permitted to serve customers within the County as are necessary to enjoy and fulfill the Company's rights and obligations under this O&M Agreement, subject to the terms and conditions set forth in this O&M Agreement.

B. The County agrees that, as a part of the consideration for this O&M Agreement, Company shall have the right, even after termination of this O&M Agreement or the Purchase Agreement, subject to capacity limitations of the Water System, to transfer water without charge through the Water System, and all future additions and future extensions thereto, and to serve customers who may be connected, directly or indirectly, to Company water mains, whether inside or outside the Water System service area. The Company shall also have the right, as part of the consideration for this O&M Agreement, to access all public rights-of-way, streets,

alleys, sidewalks and utility easements that are necessary in order to install, maintain, test, repair, replace, extend and modify its system or property or the Water System.

XI. Funding of Connector Facilities.

Company shall pay the first \$63,000 of the costs of the construction of the Connector Facilities (or such lesser amount as shall be sufficient to satisfy any matching fund requirement necessary to obtain the CDBG Funds for the Connector Facilities); the County shall pay the next \$500,000 of the costs of the construction of the Connector Facilities from available CDBG Funds; and Company shall pay the balance of such costs; provided, however, that Company shall not be required to pay in excess of an aggregate of \$300,000 under this Section XI, and Company shall not be required to pay any funds under this Section XI unless it has first received reasonable assurance that CDBG Funds are available to pay the balance of the costs of constructing the Connector Facilities in excess of the \$300,000 to be contributed by Company. Company, at its sole option and in its sole discretion, may elect to provide funds to cover any deficit in the funds required to be provided by the County under this Section XI in order to complete the Connector Facilities. Regardless of the source of funds used to pay the costs of constructing the Connector Facilities, the Connector Facilities shall be the property of Company (subject, however, to the Purchase Agreement), and the portion of the Connector Facilities funded with County funds shall be treated as property contributed by the County to the Company. Notwithstanding anything in this Section XI to the contrary, the County shall have no obligation to provide any funds for the Connector Facilities other than CDBG Funds that are made available to the County for the construction of the Connector Facilities.

XII. Force Majeure.

Neither the County or Company shall be liable for damages to the other for any act, omission, or circumstance occasioned by or in consequence of any strikes, lockouts, acts of the

public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, droughts, washouts, civil disturbances, explosions, defects, leakage, breakage, or accident to machinery or lines of pipe, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the party claiming suspension. Such causes or contingencies affecting such performance shall not relieve the County from its obligations to make payment of amounts due hereunder.

In the event of any type of water curtailment or interruption, or if any procedure, regulation or law for curtailment or interruption is utilized by, or imposed upon, Company, then the County shall abide by such curtailment or interruption procedures so as to restrict the County Customers in an appropriate manner.

XIII. Termination. In the event Company or the County exercises the right to terminate this O&M Agreement as provided in Section VI.A. or Section XV, the County must purchase from Company any property acquired by Company in the performance of this O&M Agreement (including without limitation the Connector Facilities and all extensions and additions to the Water System made pursuant to this O&M Agreement) for the property's net book value or fair market value (at the date of termination of this O&M Agreement), whichever is greater; provided, however, that the County shall receive a credit against the purchase price of any item of such property equal to the greater of (i) any amount previously paid by the County for the acquisition or construction of such item of property less accumulated depreciation or amortization, or (ii) the fair market value (at the date of termination of this O&M Agreement) of such item of property or portion thereof previously paid for by the County. The County agrees to

close any such purchase within 120 days following notification of the termination of this O&M Agreement. Further, in the event that Company has repaid the RDA Debt (as that term is defined in the Purchase Agreement) and the County subsequently terminates this O&M Agreement, in addition to purchasing the assets as required by this Section XIII, the County shall reimburse Company for the full amount of the RDA Debt repaid by Company.

XIV. Conditions Precedent to Effectiveness of O&M Agreement.

Company and the County understand and agree that this O&M Agreement, and the obligations of each of them hereunder, are expressly conditioned upon the following, each of which is a condition precedent to the validity and enforceability of this O&M Agreement; provided, however, that Company, at its sole option, may grant a written waiver of any of such conditions precedent:

A. Company shall have approved this O&M Agreement and all of the terms, conditions, undertakings, agreements and limitations in such O&M Agreement.

B. Company shall have been authorized to transfer sufficient quantities of water through one of a number of water utility districts necessary to satisfy Company's obligations hereunder.

C. In the event TRA approval of this O&M Agreement is necessary, the TRA shall have approved this O&M Agreement and shall not have attached to its Order any terms, conditions or limitations which shall adversely affect this O&M Agreement or the economic feasibility of this O&M Agreement for Company or shall require Company or County to take any action or refrain from taking any action which, in the opinion of their respective counsel, might require them, or either of them, to breach any of their obligations under any mortgage indenture, as supplemented, or any other agreement to which either of them might be a party.

D. The transfer by the District of the Water System and all of its franchises, facilities and other assets and property and its liabilities to the County pursuant to *Tenn. Code Ann.* §7-8-202 shall have occurred.

XV. Events Permitting Termination. Company shall have the right to terminate this O&M Agreement at any time upon written notice to the County upon the occurrence of any of the following:

A. Failure to include in depreciable utility plant of Company any amounts expended by Company for the cost of installing, replacing or relocating any water lines or facilities in the Water System which are defined as a "unit of property," in the NARUC Uniform System of Accounts and which are relocated or replaced by Company at its cost pursuant to Section V of this O&M Agreement, and the cost to Company to install service lines, meter settings and taps on the Water Systems pursuant to Section VII of this O&M Agreement.

B. Company's ceasing to be the exclusive provider of water to County Customers.

C. Failure by the County to fund \$500,000 of the costs of the Connector Facilities for any reason, including, without limitation, the nonavailability of the CDBG Funds.

D. County's failure to increase the Scheduled Rates as requested by Company pursuant to Section VI.A.

E. If at any time Company determines in its sole discretion that it is not economically feasible for Company to continue to perform its duties and obligations under this O&M Agreement. For purposes of this Section XV, "economically feasible" means that the compensation paid to Company under this O&M Agreement will be sufficient to cover the Company's Cost of Service.



Upon any termination of this O&M Agreement for any reason, the County shall have the obligation to purchase any property acquired by Company in its performance of this O&M Agreement (including without limitation the Connector Facilities and all extensions and additions to the Water System made pursuant to this O&M Agreement) in the manner and for the purchase price set forth in Section XIII.

XVI. Representations and Warranties.

A. The County represents and warrants to Company as follows:

(1) The execution, delivery and performance of this O&M Agreement by the County have been duly authorized by, and this O&M Agreement constitutes a valid and binding obligation of, the County, enforceable in accordance with its terms; and

(2) The execution and performance of this O&M Agreement in accordance with its terms by the County will not violate any provisions of law or violate the terms or conditions of any grants or loans made to the County or the District for construction of the Water System.

B. Company represents and warrants to the County as follows:

(1) The execution, delivery and performance of this O&M Agreement by Company have been duly authorized by, and this O&M Agreement constitutes a valid and binding obligation of, Company, enforceable in accordance with its terms; and

(2) The execution and performance of this O&M Agreement in accordance with its terms by Company will not violate any provisions of Company's indentures.

XVII. Assignability.

This O&M Agreement shall be binding upon the successors and assigns of the respective parties hereto.

XVIII. Notice.

Any notice, demand or request given hereunder shall be deemed sufficient if in writing and personally delivered or sent by certified mail, postal charges prepaid, addressed to Tennessee-American Water Company, at P.O. Box 6338, Chattanooga, Tennessee 37401, Attention: President, or such other person or address as Company may in writing direct. Any notice to be given hereunder to the County shall be personally delivered or sent by U.S. certified mail, postal charges prepaid, addressed to the County, c/o Howell Moss, County Executive, Marion County Courthouse, P.O. Box 789, Jasper, Tennessee 37347, or to such address as the County shall indicate by written notice to Company.

XIX. Captions.

The captions preceding the text of the sections of this O&M Agreement are inserted solely for convenience and reference and shall not be used to construe, interpret or affect any provision of this O&M Agreement.

XX. Entire Agreement; Amendment.

This O&M Agreement and the Purchase Agreement contain the entire agreement between the parties and supersede any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way. This O&M Agreement may be amended and any provision of this O&M Agreement may be waived, provided that any such amendment or waiver will be binding upon a party only if such amendment or waiver is set forth in writing and executed by such party.

XXI. Severability.

Whenever possible, each provision of this O&M Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this O&M

Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this O&M Agreement.

XXII. Counterparts.

This O&M Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together will constitute one and the same instrument.

XXIII. Parties in Interest.

Nothing in this O&M Agreement, express or implied, is intended to confer on any person or entity other than the parties and their respective successors and assigns any rights or remedies under or by virtue of this O&M Agreement.

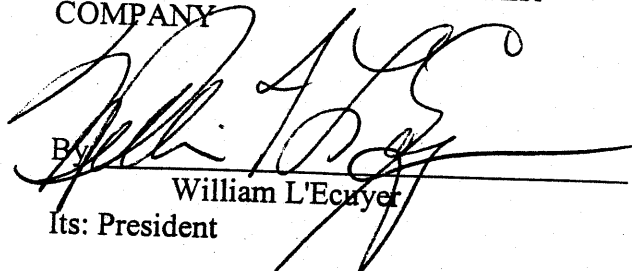
XXIV. Amendment and Restatement.

This Agreement amends, restates and replaces in its entirety that certain Operations and Maintenance Agreement dated as of April 1, 2003 between Company and County.

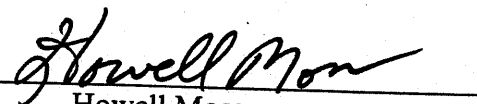
[Signatures appear on following page.]

IN WITNESS WHEREOF, Tennessee-American Water Company, a corporation, and the County have caused this O&M Agreement to be signed, by their proper officers thereunto duly authorized, to be effective as of the Effective Date.

TENNESSEE-AMERICAN WATER  
COMPANY

By:   
William L'Ecuier  
Its: President

MARION COUNTY, TENNESSEE

By:   
Howell Moss  
Its: County Executive

STATE OF TENNESSEE  
COUNTY OF Hamilton

Before me, Virginia B. Scaif, a Notary Public in and for the State and County aforesaid, personally appeared **William L'Ecuyer**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of **TENNESSEE-AMERICAN WATER COMPANY**, the within named bargainor, a corporation, and that he as such President, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such President.

WITNESS my hand and seal at office, on this the 19<sup>th</sup> day of ~~April~~ <sup>May</sup>, 2003.

Virginia B. Scaif  
Notary Public

My Commission Expires:

April 7, 2004

STATE OF TENNESSEE  
COUNTY OF MARION

Before me, J. HARVEY CAMERON, a Notary Public in and for the State and County aforesaid, personally appeared **Howell Moss**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the County Executive of **MARION COUNTY, TENNESSEE**, the within named bargainor, a political subdivision of the State of Tennessee, and that he as such County Executive, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of such County by himself as such County Executive.

WITNESS my hand and seal at office, on this the 6<sup>th</sup> day of ~~April~~ <sup>MAY</sup>, 2003.

J. Harvey Cameron  
Notary Public

My Commission Expires:

4-27-04

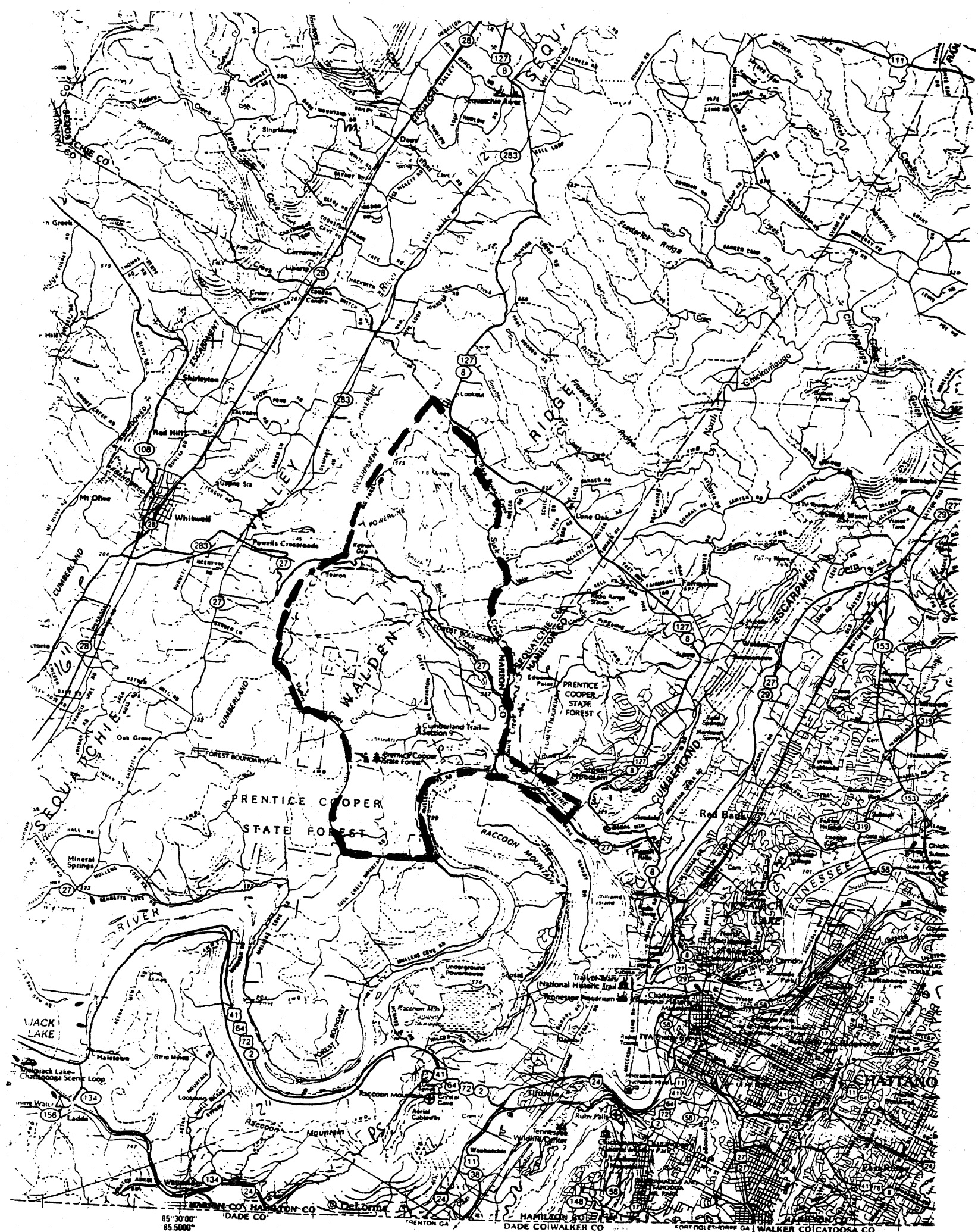
**EXHIBIT 1**  
**TO**  
**OPERATIONS AND MAINTENANCE AGREEMENT**

**Legal Description and Map of Suck Creek Water System**

**Legal Description:**

Beginning on the North bank of the Tennessee River where Shoal Creek enters the River in Hamilton County, Tennessee; thence extending along the right bank looking downstream, to Ritchie Hollow in Marion County; thence west across Walden's Ridge to Mullens Creek; thence North along Mullens Creek to Shelton Creek; thence northwest along Shelton Creek to the Cumberland Escarpment at Ditch Gap; thence northeast along the Escarpment to the Marion-Sequatchie County Line; thence southeast along the Marion-Sequatchie County Line to the junction of the Marion-Sequatchie-Hamilton County Line; thence south along the Marion-Hamilton County Line to a point one half mile from the Bank of the Tennessee River at "The Suck"; thence southeast to the southwest corner of the Town of Signal Mountain, Tennessee; thence along the south boundary of the Town of Signal Mountain to Shoal Creek; thence southwest along Shoal Creek to the north bank of the Tennessee River at the point of beginning.

**Map:** Attached.



85° 30' 00"  
85.5000°

HAMILTON CO. WALKER CO.  
DADE CO. WALKER CO.

85.3333°

WALKER CO. CATOOSA CO.  
CHATTahoochee GA

**EXHIBIT 2**  
**TO**  
**OPERATIONS AND MAINTENANCE AGREEMENT**

**Definitions and Examples of Maintenance Items and Capital Items**

- A. **Maintenance Items** generally include expenses incurred in normal day-to-day system operation, including labor and consumable materials for maintenance and repair. Examples of Maintenance Items include, but are not limited to:
- Repairing leaks where clamps, O-rings, packing materials and similar supplies can be used
  - Expenses associated with general inspection and testing within the system, including leak detection, pressure testing, and flow testing of lines, hydrants and pumps
  - Expenses associated with maintaining and lubricating valves, hydrants and pumps
  - Touch-up painting of tanks
- B. **Capital Items** generally include expenses incurred for major repairs, overhauls, additions and extensions of the water system. Included with these are capitalizable expenses related to the Capital Items, including paving materials, gravel, line location and labor. Examples of Capital Items include, but are not limited to:
- Replacing a damaged section of pipe, including fittings
  - Replacing or major rebuild of service line up to customer meters
  - Replacement or major overhaul of pumps, valves, and fire hydrants
  - Replacement of customer meters
  - Water tank painting/repainting
  - Additions to and extensions of the water delivery system



**EXHIBIT 3**  
**TO**  
**OPERATIONS AND MAINTENANCE AGREEMENT**

**Scheduled Rates**

\$22.85 per month 0 – 1000 GALLONS

\$ 4.40 per THOUSAND GALLONS UP TO 9000 GALLONS

\$ 3.30 per THOUSAND GALLONS OVER 9000 GALLONS

**TAP FEE**

\$750.00

**RENTER APPLICATION**

\$75.00

**HOME OWNER'S APPLICATION**

\$50.00